

Message Text

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TAGS: ENRG

SUBJECT; IEA - MINIMUM SAFEGUARD PRICE AND GATT

FROM ROSEN FOR SHINN

1. PLEASE PASS FOLLOWING TEXT TO LANTZKE IN DISCREET MANNER, IDENTIFYING IT AS INFORMAL WORKING PAPER PREPARED BY ROSEN ON PERSONAL BASIS.

2. MINIMUM SAFEGUARD PRICE AND GATT

I. THE GATT PROBLEM COULD PRESENT ITSELF BASICALLY IN EITHER OF TWO WAYS: A) IN RELATION TO THE OBLIGATION TO AFFORD MFN TREATMENT TO ALL GATT MEMBERS, AND B) IN RELATION TO SPECIFIC CONCESSIONS OR BINDINGS NEGOTIATED WITH GATT MEMBERS.

II. THERE ARE TWO GENERAL CONSIDERATIONS WHICH REDUCE THE MAGNITUDE OF THE GATT PROBLEM. A) AN INTERNATIONAL COMMITMENT CAN BE UNDERTAKEN TO OBTAIN AUTHORITY IN ADVANCE TO APPLY MEASURES TO ENSURE IMPORTED OIL WILL NOT BE SOLD BELOW THE AGREED LEVEL WITHOUT A REQUIREMENT THAT THE MEASURES BE INTRODUCED IN ADVANCE. IN SUCH CIRCUMSTANCES IT WOULD BE DIFFICULT FOR A GATT MEMBER WHO MIGHT POTENTIALLY BE AFFECTED BY THE MSP TO PROVE DAMAGE BEFORE ACTUAL

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TIALLY BE AFFECTED BY THE MSP TO PROVE DAMAGE BEFORE ACTUAL

APPLICATION OF MEASURES. B) A MAJORITY OF THE MEMBERS OF OPEC, INCLUDING THE LARGEST EXPORTERS, ARE NOT MEMBERS OF THE GATT.

III. IF THE MINIMUM SAFEGUARD PRICE APPLIES ONLY TO OIL IMPORTED FROM OUTSIDE THE IEA AREA, AS CERTAIN COUNTRIES INCLUDING THE U.S. THINK HIGHLY DESIRABLE, POTENTIAL CONFLICT WITH THE MFN OBLIGATION CAN BE MANAGED IN VARIOUS WAYS. (IT SHOULD BE NOTED THAT IN PRACTICE THIS IS A POTENTIAL PROBLEM FOR RELATIVELY FEW IEA MEMBERS, SINCE PRODUCTS TRADED WITHIN CUSTOMS UNIONS AND FREE TRADE AREAS ARE EXEMPTED FROM THE MFN OBLIGATION. THUS, EEC COUNTRIES WOULD NOT HAVE A GATT PROBLEM IF THEY EXEMPTED OIL FROM NORWAY AND THE UK FROM MSP MEASURES NO MATTER WHAT DEFINITION OF IMPORTED OIL IS CHOSEN.) THERE ARE AT LEAST TWO GENERAL EXCEPTIONS TO GATT OBLIGATIONS INDIVIDUAL COUNTRIES COULD RESORT TO AT THE TIME THEY INTRODUCE MSP MEASURES.

A) THE SHORT-SUPPLY EXCEPTION OF ARTICLE XX J. IT CAN BE ARGUED THAT THE EMBARGO AND THE RAPID INCREASE IN THE PRICE OF OIL DEMONSTRATED THAT THE MEASURES CONTEMPLATED ARE "ESSENTIAL TO THE ACQUISITION OR DISTRIBUTION OF PRODUCTS IN GENERAL OR LOCAL SHORT SUPPLY", AND THAT THE MUTUAL OBLIGATIONS UNDERTAKEN BY IEA MEMBERS IN THE LONG TERM PROGRAM MAKE NON-APPLICATION OF THE MEASURES TO OIL PRODUCED IN THE IEA AREA "EQUITABLE."

B) THE SECURITY EXCEPTION OF ARTICLE XXI B. THIS MAY BE APPLIED IN TIME OF EMERGENCY IN INTERNATIONAL RELATIONS. IT SHOULD BE NOTED THAT EMERGENCY IS A FLEXIBLE TERM WHICH HAS BEEN APPLIED IN RELATION TO THE GATT IN WIDELY VARYING CIRCUMSTANCES.

IV. THE ARTICLE XIX ESCAPE CLAUSE COULD BE APPROPRIATE IN MANY CASES IN WHICH THE APPLICATION OF MEASURES PURSUANT TO THE MSP SYSTEM RESULTED IN THE IMPAIRMENT OF SPECIFIC GATT CONCESSIONS. (THOUGH THE LEGISLATIVE LIMITED OFFICIAL USE

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HISTORY AND PRACTICE IN THE GATT SUGGEST THAT ARTICLE XIX SHOULD BE APPLIED IN CONFORMITY WITH THE MFN OBLIGATION, THIS ASPECT WILL PROBABLY BE REEXAMINED DURING THE CURRENT NEGOTIATIONS IN GENEVA.) THE GENERAL EXCEPTIONS WOULD ALSO, OF COURSE, SERVE TO OVERRIDE SPECIFIC CONCESSIONS NEGOTIATED IN GATT.

V. THOUGH IT WOULD PROBABLY NOT BE NECESSARY IN

VIEW OF THE ANALYSIS ABOVE, IT WOULD BE POSSIBLE FOR
INDIVIDUAL COUNTRIES TO USE THE PROCEDURES OF ARTICLE

XXVIII TO WITHDRAW CONCESSIONS ON OIL. INGERSOLL

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